74-1409

Supreme Court, U. S.
FILED
AUG 4 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 74-4109

LONNIE NORTH - - - - - Appellant

Vs.

C. B. RUSSELL; NATHANIEL "TRAP" HELTON, JAILER OF HARLAN COUNTY - - - - - Appellees

---

ON APPEAL
FROM
COURT OF APPEALS OF KENTUCKY

BRIEF OF AMICUS CURIAE KENTUCKY BAR ASSOCIATION

LESLIE G. WHITMER
Director and Counsel
Kentucky Bar Association
243 State Capitol Building
Frankfort, Kentucky 40601
Counsel for Amicus Curiae

ROBERTS PRINTING CO., FRANKFORT, KY.

INDEX

	Pages
INTEREST OF AMICUS CURIAE	1-2
ARGUMENT	2-13
All judges in criminal cases involving possible imprisonment of the accused should be lawyers.	2-13
CONCLUSION	13-14
CERTIFICATE	14
APPENDIX	1a-6a

TABLE OF AUTHORITIES

CASES:	Pages
Argersinger v. Hamlin, 407 U.S. 25 at 32, 37 (1972)	6, 7, 13
Freiler v. Schuylkill County, 46 Pa. Super. 58 (1911)	10
Gordon v. The Justice Court for the Judicial District of Sutter County, Cal., 43 U.S.L.W. 2089 (1974)	10
Grubbs v. State, Ind., 265 N.E.2d 40, 44 (1970)	5
Jamieson v. Wiggin, S.D., 80 N.W. 137 (1899)	8-10
Kentucky State Bar Assn. v. Tussey, Ky., 476 S.W.2d 177 (1972)	8
Opinion of the Justices, Ala., 279, 181 So.2d 105 (1965)	10
Powell v. Alabama, 287 U.S. 45 at 68-69 (1932)	6

Pages

CONSTITUTIONAL PROVISIONS:

United States Constitution

Fourteenth Amendment 3, 10

Kentucky Constitution

Article Fourteen 3

Section 143 12

STATUTES:

Kentucky Revised Statutes

KRS § 26.010 3

KRS § 26.140 3

KRS § 26.150 3

KRS § 26.200 3

KRS § 30.170 1

COURT RULES:

Rules of the Kentucky Court of Appeals

RCA 3.130 2

RCA 3.460 8

OTHER SOURCES:

American Bar Association Code of Professional Responsibility

EC 8-9 2

DR 8-101 (A) (2) 4

The Task Force Report: The Courts by the President's Commission on Law Enforcement and Administration of Justice (1967) at page 29 7-8

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 74-4109

LONNIE NORTH - - - - - - - - *Appellant*

Vs.

C. B. RUSSELL; NATHANIEL "TRAP" HELTON, JAILER OF HARLAN COUNTY - - - - *Appellees*

ON APPEAL
FROM
COURT OF APPEALS OF KENTUCKY

BRIEF OF AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The Kentucky Bar Association, by an act of the Kentucky General Assembly, KRS 30.170, (Appendix, pp. 2a, 3a) is an administrative agency of the Kentucky Court of Appeals governing members of the bar by Rule 3 of that court. All persons practicing law in this state must be members in good standing of the Kentucky Bar Association.

In the course of lawyers practicing their profession, it becomes necessary for them to appear in city police courts in Kentucky cities below the second class pre-

sided over by judges who are not lawyers. A lawyer's knowledge of the operation of the Kentucky lower court system and the effect of such a system on his practice of law under ethical standards of practice adopted by the Kentucky Court of Appeals should be considered in deciding the important constitutional questions raised by counsel for defendant, Lonnie North.

In addition, the Kentucky Bar Association has a duty to upgrade the lower court judiciary by presenting to this court compelling arguments concerning why all lower court judges, including police judges, should not only be learned in the law but be licensed attorneys.

The decision of the court in this case will directly affect all members of the Kentucky Bar Association practicing law in the Commonwealth of Kentucky, therefore, the interest of your amicus curiae is clear.

ARGUMENT

ALL JUDGES IN CRIMINAL CASES INVOLVING POSSIBLE IMPRISONMENT OF THE ACCUSED SHOULD BE LAWYERS.

Lawyers, by reason of their education and legal experience, are in the best position to observe the poor quality of a lower court judicial system presided over by a judge who is not a lawyer. Rule of the Kentucky Court of Appeals (RCA) 3.130 adopting the American Bar Association's Code of Professional Responsibility (hereinafter referred to as the "Code"), has made it mandatory for lawyers to actively participate in the advancement of our legal system which is of vital importance in maintaining the rule of law. Code EC 8-9. (Appendix, p. 6a). It should be obvious that lawyers, when arguing that all lower court judges should be attorneys at law, are not seeking to forward any selfish goal of the individual attorney or the pro-

fession but rather to meet their special responsibility to the courts and the public by endeavoring to cause judges having criminal jurisdiction to be persons of competence and suitable judicial temperament. The guarantee of a fair criminal trial is the foundation of our democratic society.

Counsel for the appellant herein has made striking and compelling constitutional arguments to support the position that KRS 26.010 and KRS 26.200 (Appendix, pp. 1a, 4a) deny a person charged with a crime in a city of the fourth class equal protection of the laws and due process of law protections accorded to him under the Fourteenth Amendment to the Constitution of the United States and Article Fourteen of the Constitution of Kentucky where the defendant must appear before a police judge who is not learned in the law. It is shocking and contrary to fundamental concepts of justice to learn that a person charged with a crime which may deprive him of his freedom may appear before a Kentucky police court chaired by an individual who is a lawyer, provided the defendant is charged in a city of the first or second class, (KRS 26.140, 26.150) (Appendix, p. 2a), while a defendant charged in a city below the second class will most probably appear before a person not qualified to practice law. A system that imposes unequal protection of the law with substantial and almost certain risks that due process will not be afforded to defendants in a major and basic part of society—rural Kentucky—cannot and will not command the public respect and confidence essential to the effective administration of justice in the United States. Petitioner joins with counsel for appellant in asserting that each individual charged with a crime in Kentucky must have his basic

federal constitutional rights protected in that he has a right to be heard by a judge learned in the law. That is to say, the judge must be a lawyer. Anything less is obviously a denial of equal protection and due process.

In the opinion of the Kentucky Court of Appeals from which this appeal is taken it is stated:

> "We fully appreciate the absurdity of having a lawsuit—any lawsuit—presided over in this day and age by a person without legal training or experience. Nevertheless, it was our conclusion in *Ditty v. Hampton,* Ky., 490 S.W.2d 772 (1973), that the federal constitution does not deny the people the right to have it that way if they so desire."

The Kentucky Bar Association files this amicus curiae brief in support of the conclusion of the Kentucky Court of Appeals' statement as to the absurdity of a judge not having legal training and extending the argument to show the absolute necessity of all judges in criminal matters to be licensed attorneys.

Lawyers practicing before lay judges are frequently placed in a climate which fosters violations of the Code. The layman judge cannot cope with the complex violations of the Code. The public sometimes makes the charge that the judge and the prosecutor have conspired to convict a defendant. A prosecutor who uses his public position to influence or attempt to influence a tribunal to act in favor of himself or of a client is engaged in unethical and unprofessional conduct. Code DR 8-101 (A) (2). (Appendix, p. 6a). It is not uncommon to have a layman judge seeking sole advice from the prosecutor in his court in making his judicial determinations. A man cannot serve two masters. Such consultations by the court with the

prosecutor followed by an adverse ruling to the defendant raise an element of impropriety in the mind of the defendant which can never be erased. Many times to see that justice is done, a prosecutor may have to convince a layman judge that a ruling should be made for a defendant. In such circumstance, the state does not receive the undivided loyalty and energy to be expected from its prosecutor; and the true adversary process is, therefore, violated. The lawyer is in an ethical dilemma. A lawyer in the community who enjoys prominence and political power can find himself in the same position as the prosecutor when the judge who is not a lawyer relies on him to make judicial determinations when he represents a defendant.

Assuming that a defendant is represented by competent counsel, the rights of neither the state nor the defendant may be protected where the judge lacks the legal capabilities of a lawyer. The judge cannot be expected to comprehend the increasing complexities of the criminal law process. An even heavier burden rests on the layman criminal trial judge where the defendant represents himself.

> "When a judge sits on the trial of a criminal case in which the defendant has chosen to be his own lawyer, he must be especially acute and vigilant in governing the conduct of counsel and witnesses in order to insure that it does not jump the tract (sic) and become an inquisition in which the sole end sought is conviction rather than a decision based upon lawful evidence." *Grubbs v. State,* 265 N.E.2d 40, 44 (Ind. 1970).

This court has recognized the limitation on a layman to comprehend legal problems in a criminal case when it held that in a capital crime a defendnat had a right to counsel. The Court said:

> "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law." *Powell v. Alabama,* 287 U.S. 45 at 68-69 (1932).

In the recent case of *Argersinger v. Hamlin,* 407 U.S. 25, (1972), granting the right to counsel to indigent persons charged with a misdemeanor provided the defendant faces the possibility of being deprived of his freedom, the Supreme Court quoted from its decision in *Gideon v. Wainwright,* 372 U.S. 335, 344 (1963):

> "From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law."

As a matter of fact, many layman police judges in Kentucky are high school graduates at best. To say that a defendant has an equal right to law when he appears before a layman judge of this background is definitely an erroneous statement. If lawyers served as police judges, there would be fewer errors in the proceedings and fewer appeals would be taken from police courts to circuit courts. Frequent is the advice of defense counsel to his client that the best setting for his trial is in circuit court where the judge is a lawyer. Lawyers many times fail to be optimistic about their chances before a layman judge. The presentation of a good defense is of little avail if a layman judge cannot comprehend the arguments made by competent counsel.

> "The trial of vagrancy cases is illustrative. While only brief sentences of imprisonment may be imposed, the cases often bristle with thorny constitutional questions." *Argersinger v. Hamlin, supra,* at 32.

Unfortunately, a majority of defendants appearing in lower courts in this country, for economic reasons, never reaches the appellate level of the courts even though their convictions rest on faulty procedural steps or substantive law concepts. The Task Force Report: The Courts by the President's Commission on Law Enforcement and Administration of Justice (1967) at page 29 reports:

> "No findings of this Commission are more disquieting than those relating to the condition of the lower criminal courts. These courts are lower only in the sense that they are the courts before which millions of arrested persons are first brought, either for trial of misdemeanors or petty offenses or for preliminary hearing on felony charges. Although the offenses that are the business of the lower courts may be 'petty' in respect to the amount of damage that they do and the fear that they inspire the work of the lower courts has great implications. Insofar as the citizen experiences contact with the criminal court, the lower criminal court is usually the court of last resort. While public attention focuses on sensational felony cases and on the conduct of trials in the prestigious felony courts, 90 percent of the Nation's criminal cases are heard in the lower courts.

The importance of the lower courts was emphasized almost 50 years ago in Charles Evans Hughes' admonition to the New York State Bar Association:

> The Supreme Court of the United States and the Court of Appeals will take care of themselves. Look after the courts of the poor, who stand most in need of justice. The secur-

> ity of the Republic will be found in the treatment of the poor and ignorant; in indifference to their misery and helplessness lies disaster."

To protect the public, the Kentucky Court of Appeals has adopted RCA 3.460 (Appendix, pp. 4a-6a), to police the unauthorized practice of law by those not properly trained and licensed in the science of law. It has been recently held that an officer of a bank cannot prepare a real estate mortgage. *Kentucky State Bar Assn. v. Tussey,* 476 S.W.2d 177 (Ky. 1972). It seems apparent to petitioner that if an astute banker cannot prepare a real estate mortgage because of the lack of legal knowledge necessary to protect the public, a layman police judge cannot meet the required standard to conduct a judicial proceeding which could deprive a person of his freedom.

Appellant North states that he has a right to be tried in a court presided over by a competent judge, sufficiently trained and informed in the procedural statutory, constitutional and case law of his jurisdiction, so that all rights, privileges and immunities afforded to him by law will be accorded to him at all stages in the proceedings. In other words, the judge should be "learned in the law." To your amicus curiae, the meaning of the phrase "learned in the law" is ambiguous and meaningless. Other courts have been faced with the problem of giving concrete meaning to this amorphous phrase which appears in several state constitutions. The frequently quoted opinion of the Supreme Court of South Dakota in *Jamieson v. Wiggin,* 12 S.D. 16, 80 N.W. 137 (1899), clearly states your petitioner's position:

> "* * * The phrase, 'learned in the law' will be found in several state constitutions. It is alliterative, euphonious, vague, and indefinite. A person who has never been admitted to the bar may be profoundly learned in the law, while one who has been admitted may be as profoundly ignorant of its principles. Between such a lawyer as Ambassador Choate and 'Squire Tompkins, of Tompkins Corners,' there are as many degrees of learning in the law as there are members of the bar in the United States. Where, then, shall the line be drawn in determining the qualifications of judges under this provision of the constitution? When and by whom shall the question be determined? It was certainly not contemplated that the educational qualifications of a candidate for supreme judge should be determined by a referee or jury in a contested election case, as might be the result were we to hold that his learning in the law is a question of fact, to be ascertained by an examination subsequent to his election. * * *
>
> "* * * Since the state was admitted, all political parties have acted upon the assumption that candidates for office of supreme or circuit judge should be members of the bar. It would certainly surprise the legal profession and people generally to announce that any person not a lawyer might hold either of these offices. Under the constitution, there can be no distinction between supreme, circuit, or county judges with respect to this qualification; and we are constrained to hold that no one is eligible to either position who is not, when elected, either admitted, or entitled to be admitted, without examination, to practice as an attorney at law in this state. In other words, the fact that the candidate is learned in the law must have been ascertained by a competent tribunal prior to the election; the only and conclusive evidence of such fact being an admission to the bar by a court of this or some other

> jurisdiction authorized to license persons to practice as attorneys at law. When elected, the candidate must be an attorney at law. As it affirmatively appears from undisputed evidence that defendant was not 'learned in the law,' within the meaning of that term as herein defined, the judgment of the circuit court is reversed. * * *"

See also *Opinion of the Justices*, 279 Ala. 38, 181 So.2d 105 (1965); *Freiler v. Schuylkill County*, 46 Pa. Super. 58 (1911).

It would be unsound for this court to adopt a policy permitting persons "learned in the law" rather than lawyers to sit as criminal court judges. It is submitted that the Supreme Court of California in *Gordon v. The Justice Court for the Judicial District of Sutter County*, 43 U.S.L.W. 2089 (1974), reached the correct conclusion when it held that a lay judge system requiring passage of a written examination before assuming trial of cases could not withstand an argument of the Fourteenth Amendment. The Supreme Court of California properly held that criminal trial judges have to be lawyers when a jail sentence may be involved. There are no grey areas. The standard is clear and certain. It will not spawn litigation involving the degree of legal learning possessed by lay judges.

Seminars for layman judges designed to attempt to educate them in the particular area of criminal law with which they will be confronted on the bench, while commendable, cannot impart sufficient legal knowledge to cause him to be an effective criminal court judge. This approach has many fallacies. Assuming that you have 100% attendance at the seminars by layman judges with college degrees, the situation is no different. It would be like saying that a business major in college is fit to practice commercial law in the business world after completing a commerce course in business law. The concept will not work. The cost of such an ineffective educational procedure would be much better spent on paying a competent lawyer to serve on the police court bench. The recognition of legal concepts and the manipulation of those concepts to formulate judicial decisions are entirely two different matters. The layman may be taught to do the former. Only a lawyer can do the latter. It is doubtful that layman police judges receiving meager compensation from his judicial work will find the time or the ptaience to attend any legal education program even if he is compensated for his time away from his primary work.

The court requires the attorney advocate appearing for and on behalf of a person accused of a crime to have successfully completed a minimum of five years of college and law school training and to have passed a rigid bar exam before being permitted to represent such defendant. On the other hand, lower court judges, who will make the judgments and rulings on the case, sit in judgment without any legal qualifications whatsoever. This violates all pretense of "equal protection" and "due process."

The standard of conduct required of a lawyer is an extremely high one.

> "A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct.' Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law

exemplifies respect for the law. To lawyers especially, respect for the law should be more than a platitude." Code EC 1-5.

When both the officers of the court—lawyers—and the lawyer-judge have a full understanding, feeling for and appreciation of the noble standard of conduct, it is only then that the public can have reason to have confidence in and respect for the law and their judiciary. It is only then that the lower court system can expect the confidence and respect of the public.

By virtue of Section 143 (Appendix, p. 1a), of the Constitution of Kentucky, the police court is given criminal jurisdiction within the corporate limits of the city concurrent with that of justices of the peace. Any decision of this court in increasing the qualifications presently required of police judges in cities below the second class must necessarily affect the system of justices of the peace in Kentucky. It is the feeling of your amicus curiae that these archaic justice of the peace courts having a foundation in the English legal system and inherited by the United States—a system of layman judges—must go the way of the horse and buggy. All judges having criminal jurisdiction must be lawyers in order to protect the public interest in the judicial process.

The legal profession has, for many years, carried an enormous economic burden in defending indigent defendants in criminal cases before the courts of the Commonwealth of Kentucky without fees or reimbursement for costs before the enactment of the Kentucky Public Defender System by the 1972 General Assembly. Lawyers in fulfillment of their duty to the courts and the public will serve as lower criminal court

judges, at personal sacrifice, to guarantee, as far as humanly possible, the fair administration of justice in the Commonwealth.

Should this court hold that all criminal trial judges must be lawyers, there will be no reason to doubt that there is and will continue to be an ample supply of lawyers to serve on the bench. This court has accurately reflected the ever increasing law school enrollment in *Argersinger v. Hamlin, supra,* at 37, FN. 7. Every year in this country, thousands of *well qualified* applicants to law schools are being denied entry to the legal profession partly because the profession has difficulty in finding legal positions for its members. A great natural resource is not being utilized while layman judges sit in uneducated judgment on whether or not citizens are to maintain and benefit from their fundamental right to a fair criminal trial. This court has enforced citizens rights to counsel in criminal proceedings resulting in possible imprisonment; however, the public will not realize the full light of its wisdom until the judges before whom counsel must argue display equal qualifications evidencing their ability to protect vital constitutional rights of the accused and the state. That is to say, lawyer judges will hear the legal arguments of lawyers.

CONCLUSION

It is respectfully submitted that appellant Lonnie North has been deprived of his rights guaranteed to him by the Constitution of the United States. He has the right to appear before a tribunal consisting of a judge who is a lawyer duly licensed by the highest state court in which he resides. The public will applaud

this court for its action in enforcing this right, and the standards of criminal justice will be greatly upgraded.

Respectfully submitted,

LESLIE G. WHITMER
Director and Counsel
Kentucky Bar Association
243 State Capitol Building
Frankfort, Kentucky 40601
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I, Leslie G. Whitmer, Counsel for Kentucky Bar Association, Amicus Curiae herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 1st day of August, 1975, I served on Honorable Ed W. Hancock, Attorney General of Kentucky, Capitol Building, Frankfort, Kentucky 40601, Honorable Wix Unthank, Commonwealth Attorney, Harlan, Kentucky 40831, Attorneys of record for Appellees, C. B. Russell and Nathaniel "Trap" Helton; and Eugene Goss, Central Street, Harlan, Kentucky 40831 and Dean Hill Rivkin, 630 Maxwelton Court, Lexington, Kentucky 40508, Attorneys for Appellant, 3 copies each of this brief of amicus curiae, by mailing same, postage prepaid.

Leslie G. Whitmer

LESLIE G. WHITMER

APPENDIX

CONSTITUTION OF KENTUCKY

POLICE COURTS

§ 143. **Establishment and jurisdiction of.** — A police court may be established in each city and town in this state, with jurisdiction in cases of violation of municipal ordinances and by-laws occurring within the corporate limits of the city or town in which it is established, and such criminal jurisdiction within the said limits as justices of the peace have. The said courts may be authorized to act as examining courts, but shall have no civil jurisdiction: Provided, The general assembly may confer civil jurisdiction on police courts in cities and towns of the fourth and fifth classes, and in towns of the sixth class having a population of two hundred and fifty or more, which jurisdiction shall be uniform throughout the state, and not exceed that of justices of the peace.

KENTUCKY REVISED STATUTES

26.010 Criminal and penal jurisdiction of police courts.

Except as provided in KRS 167.990, 208.020, subsection (4) of 208.990 and 242.990, police courts in cities of every class have jurisdiction exclusive of circuit courts in all penal and misdemeanor cases where the punishment is limited to a fine of not more than twenty dollars, jurisdiction concurrent with circuit courts of all penal and misdemeanor cases where the punishment is limited to a fine of not more than five hundred dollars, or imprisonment not exceeding twelve months, or both, and exclusive jurisdiction of all violations of city ordinances occurring within the city limits.

26.140 Police judge in cities of first class.

The judge of the police court in cities of the first class shall have the qualifications and take the oath required of circuit judges. The judge shall devote his whole attention to the duties of his court. He shall have each year a vacation of two months. Subject to KRS 26.300, the judge may adopt rules and regulations for conducting the business of his court, and may enforce them by process of contempt. He shall have all powers necessary to try cases coming under his jurisdiction. He may administer oaths, and shall be a conservator of the peace. His salary shall be fixed by ordinance, and paid at the same time and in the same manner as the salaries of other city officers.

26.150 Organization and judge of police court in cities of second class.

In cities of the second class the police court shall have one judge. He shall receive a salary fixed by ordinance, and no other compensation except the fees allowed to judges for holding examining trials in felony cases. He shall have each year a vacation of one month. No person shall be eligible to be police judge unless at the time of his election he is at least twenty-five years of age and has been a resident of the city for at least four years.

30.170 Court rules governing practice of law and State Bar.

(1) The Court of Appeals shall adopt and promulgate rules:

(a) Defining the practice of law;

(b) Prescribing a code of ethics governing the professional conduct of attorneys and the practice of law;

(c) Establishing practice and procedure for disciplining, suspending and disbarring attorneys;

(d) Organizing and governing a Bar Association of the attorneys of the state to act as an administrative agency of the Court of Appeals for the purpose of enforcing such rules as are adopted and promulgated by the court under this section; providing for the government of the State Bar as a part of the judicial department of state government, and for such divisions thereof as the Court of Appeals determines; requiring all persons practicing law in this state to be members in good standing of the State Bar; and fixing the form of its organization and operation;

(e) Fixing fees upon recommendation of the board of Bar Commissioners to be paid for the purpose of administering this section and the rules adopted and promulgated under it, and for the collection and disbursement of such fees.

(2) The rules of court adopted and promulgated under this section shall supersede all laws or parts of law in conflict therewith, to the extent of the conflict.

(3) No rule adopted and promulgated under this section shall prevent a person not holding himself out as a practicing attorney from writing a deed, mortgage or will, or prevent a person from drawing any instrument to which he is a party.

26.200 Police judge in cities of fifth and sixth classes.

No person shall be eligible to be police judge in a city of the fifth or sixth class unless he is a resident and voter of the city, and has resided there for a year next preceding his election or appointment. Before entering upon the duties of his office, the judge shall execute a bond to the Commonwealth with good and sufficient sureties, approved by the county judge. The bond shall be filed and recorded in the county clerk's office and an entry made upon the order book of the county court, showing that the bond was executed and approved and giving the names of the sureties. The county judge, at any time that he has reason to believe that the bond is not good or that the sureties are about to become insolvent, shall require that a new bond be executed or additional sureties given on the old one.

RULES OF COURT OF APPEALS OF KENTUCKY

3.130 ABA Code of Professional Responsibility Recognized as Authority.

The Court recognizes and accepts the principles embodied in the American Bar Association's Code of Professional Responsibility as a sound statement of the standard of Professional conduct required of members of the bar, and the Board may cause to be tried all charges brought under this code as well as charges for other unprofessional or unethical conduct calculated to bring the bench and bar into disrepute.

RCA 3.460 Unauthorized Practices Proceeding.

(a) When it comes to the attention of the Director that any person or entity not having the right to

practice law is directly or indirectly practicing law, the Director shall have the authority to cause such investigation to be made concerning the matter as he deems appropriate. If the Director determines that any person or entity has been engaged in the unauthorized practice of law, the Director shall send a letter of warning by certified mail, return receipt requested, to the person's or entity's last known address, requesting that the unauthorized practice of law be discontinued. If future violations occur and in the opinion of the Board action should be taken, it shall direct that a motion in the name of the Association for a show cause rule be filed with the Clerk. The Clerk shall docket the motion and issue a rule against the alleged offender to show cause why he should not be held in contempt for unauthorized practice of law. The rule shall be returnable on the 15th day following service. When procedure is by warning order, service shall be deemed to have been made thirty days after the date of making the warning order.

(b) If the respondent fails to file due response on the rule's return day or files a response admitting the offense, the rule shall forthwith be made absolute, and the Court shall enter such orders as it deems appropriate to deter and punish, which may include injunctive relief.

(c) If the respondent timely files response denying the offense, the Court shall refer the case to a designated circuit judge sitting as a special commissioner, who shall thereupon hold a hearing at such time and place as he may fix, at which hearing the Association shall be represented by counsel designated by the Board for that purpose. The parties may obtain compulsory attendance of witnesses and the production of docu-

ments as provided in the Civil Rules. The special commissioner, at the conclusion of the hearing, may permit the filing of briefs by the parties, and shall make and submit to the Court written findings of fact and recommendations.

(d) Upon filing of the special commissioner's report, the Court may permit the filing of briefs by the parties or may summarily dispose of the matter and shall enter such order as may be appropriate. The Clerk shall furnish counsel and the Director copies of every order entered under this rule and every such order shall be reported and published as are other opinions of the Court.

(e) If the respondent is adjudged guilty, he shall be liable for all court costs, and the provisions of Civil Rule 73.07 shall apply.

AMERICAN BAR ASSOCIATION CODE OF PROFESSIONAL RESPONSIBILITY

ETHICAL CONSIDERATION:

EC 8-9 The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements.

DISCIPLINARY RULES:

DR 8-101 Action as a Public Official.

(A) A lawyer who holds public office shall not:

(2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.